

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3661 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURESH HARCHAND SONAR

Versus

DISTRICT MAGISTRATE

Appearance:

Mr.Anil S.Dave, Advocate for the petitioner.

Mr. U.R.Bhatt, AGP for the respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 01/08/96

ORAL JUDGEMENT

The petitioner Suresh Harchand Sonar by way of this petition under Article 226 of the Constitution of India has challenged the legality and validity of the order of his detention dated 27-1-1996 passed under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 by the Commissioner of Police ,Surat City.

As can be seen from the grounds of detention supplied to the detenu, the detaining authority has placed reliance on four pending trial cases registered at C.R.No.139/95, C.R.No. 156/95, C.R.No. 157/95 and C.R.No. 277/95 covering the offences punishable under Chapter XVI and XVII of the Indian Penal Code. Over and above the said criminal cases, the detaining authority has also relied on the statements of three witnesses for the alleged incidents of 7-8-95, 11-9-95 and 21-10-95 without disclosing the identity of these witnesses to the detenu invoking provisions of section 9(2) of the said Act. Considering this material placed before it, the detaining authority has recorded a finding that the detenu is a "dangerous person" within the meaning of section 2 (c) of the said Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order it was necessary to pass the detention order and, therefore, the impugned order of detention has been passed against the detenu which has been challenged in this petition.

I have heard Mr. A.S.Dave, learned Advocate for the petitioner and Mr. U.R.Bhatt, learned Assistant Government Pleader for the respondents at length. Mr. Dave submitted a number of contentions. However, it is not necessary to refer to and deal with all those contentions as this petition is required to be allowed on the ground of non-supply of the copies of the bail application and the bail order of the co-accused to the detenu causing prejudice to the detenu in making an effective representation against his detention guaranteed under Article 22(5) of the Constitution of India.

Having perused the grounds of detention and other documents supplied to the detenu, it appears that in Criminal Case No.157/95 registered before Limbayat Police Station, the detenu alongwith other co-accused filed bail applications . The bail application filed by the detenu was registered as Miscellaneous Criminal Applications Nos.37/96 and the bail applications filed by the other co-accused were registered as Miscellaneous Criminal Applications Nos.91/96, 93/96 and 94/96. It further appears that the learned Second Joint Sessions Judge, Surat released three other co-accused on bail. Relying on that order, the learned Additional Sessions Judge granted all the aforesaid Miscellaneous Criminal Applications on 21-1-96, meaning thereby the detenu as well as the other co-accused were also released on bail. Mr. Dave, learned Advocate for the petitioner, therefore, made a grievance that the applications of the co-accused and the bail orders passed by the competent

Court thereon releasing the co-accused on bail being relevant material, the copies thereof ought to have been supplied to the detenu. There is substance in what Mr. Dave has urged. The bail applications as well as the bail orders passed in favour of the co-accused are relevant documents and, therefore, copies thereof ought to have been supplied to the detenu. The non-supply of the copies thereof has adversely affected the right of the detenu of making an effective representation against his detention guaranteed under Article 22 (5) of the Constitution of India. The Supreme Court in State of U.P. vs. Kamal Kishore Saini, 1988 (1) SCC, 287 has held that bail application filed by the co-accused and the order passed thereon constitute relevant material, which was required to be produced before the detaining authority and the detaining authority was required to apply its mind to such relevant material. When such a relevant material is withheld from the detaining authority, the Apex Court held that the satisfaction of the detaining authority is vitiated inasmuch as the relevant material is kept back from the detaining authority and, therefore, its subjective satisfaction is vitiated. In the instant case also, it is not in dispute before this Court that the copies of the bail applications of the co-accused were not supplied to the detenu, nor were placed before the detaining authority. In view of this infirmity, the continued detention of the detenu is required to be held illegal and the detenu is required to be released forthwith by quashing and setting aside his continued detention.

in the result, this petition is allowed. The order of detention dated 27-1-1996 is quashed and set aside. The detenu Suresh Harchand Sonar is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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